SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 503

THOMAS L. "JACK" SPIERS,

Petitioner,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

May it please the Court:

This case presents the question whether under the war powers of the Constitution of the United States the Congress has the power to extend a maximum price on the sale of whiskey sold in Mississippi in violation of the laws of the State; and whether or not the Congress attempted to delegate the power to the Price Administrator to control and fix the maximum price on the sale of whiskey in the State.

By section 2613 of the Mississippi 1942 Code it is made unlawful to keep, have in possession, barter or give away intoxicating liquors. By section 2618 of the Mississippi 1942 Code it is provided that no property right shall exist in any person, natural or artificial, or be vested in them, in any intoxicating liquors or intoxicating drinks pro-

hibited by this chapter from being manufactured or distilled, or sold, or possessed, nor shall any property right exist in such person, of stills, furnitures, fixtures, vehicles, automobiles or other motor power, means of transportation, etc.

By the 18th amendment to the Constitution of the United States the States delegated to the National Government the power to prohibit the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States or territory subject to the jurisdiction thereof. This was a delegation of the Sovereign power of the States to the National Government of the right to control the sale or transportation of intoxicating liquors with the duty to prohibit the manufacture and sale thereof.

Thereafter the Sovereign States of the Union withdrew from the National Government the delegated authority to control the manufacture and sale of intoxicating liquors and revested it, by section 1 of the 21st amendment to the Constitution of the United States, in the States. By section 2 of the said amendment the States imposed upon the National Government and the National Government assumed the responsibility of the duty to prevent the transportation or importation into any state, territory or possession of the United States for delivery or use thereby of intoxicating liquors, in violation of the laws thereof.

In withdrawing from the National Government the powers and authority so delegated to it, as a part of the organic law granted in the 18th amendment, the States placed upon the National Government the imperative duty of prohibiting the transportation or importation of intoxicating liquors into a state, in violation of the laws of that particular state.

By article 1, paragraph 8, section 11 of the Constitution of the United States, the Sovereign States granted or dele-

gated to the National Government the power to declare war, grant letters of marque and reprisal and make rules concerning captures on lnad and water.

By section 12 they gave to the National Government the power to raise and support armies.

By section 13 they gave it the power to provide and maintain a navy.

By section 14 the power to make rules for the Government and regulations of land and naval forces.

By section 15 the power to provide for calling forth the Militia to execute the laws of the Union, suppress insurrections and repel invasions.

Article 1 section 8 specifically starts by saying that the Congress shall have all power. We call the Court's attention, with emphasis, to the fact that the war powers are granted powers and not imposed duties.

The distinction that we make here and as we believe is controlling in this case, that the States granted to the National Government the war powers, which may be necessary in the waging of a war, to be exercised. A granted power carries with it the right of exercise of the volition of the Sovereign to which they are granted. In other words when the Constitution says the Congress shall have the power, being the first expression under article 1 section 8, it means and must be interpreted that the Congress has the volition, upon due consideration, to act or not to act, there being no duty of action contrary to the deliberate conclusions reached by the Congress assembled.

In article 2 of the 21st amendment, in withdrawing from the National Government the duties that had been imposed by the 18th amendment, the States imposed the duty of prohibiting the transportation or importation of intoxicating liquors into any State in violation of the laws thereof.

The language of this amendment shows clearly that the Sovereign States had not, by the said 21st amendment,

delegated to the National Government any powers whatsoever. The provision of the Amendment imposed upon the National Government the duty of prohibiting the violations of the State statutes.

A duty, as we understand it, imposed upon the National Government, by the Constitutional provision, expressed the deliberate decision as the volition of the Sovereign States themselves. The National Government did not have it within its privilege to determine to act or not to act, but the duty of action was imperative. A change of the mandate of the Sovereign States in a Constitutional amendment to the Constitution of the United States is the only way the National Government can be relieved of the duty so imposed.

Acting under the war powers, which was a grant of power to the National Government, where it could, in the exercise of its volition, act or refrain from acting, the Emergency Price Control Statutes were enacted. An Administrator, clothed with the power of the Sovereign itself, was set up, to fix maximum prices under the powers so granted. To extend the price regulation, into a state, upon articles prohibited from being held, owned or brought into the State, would bring the powers thus exercised in conflict with the duties solemnly imposed.

The question we are asking this Court to decide, is whether or not the National Government can sweep aside the duties, that have been imposed upon it by the Sovereign States, in the exercise of the powers that had been granted to it by the States, when the powers so granted and the duties so imposed, come in conflict one with the other.

In other words, can the National Government, in breach of its duty, claim to act under a delegated power in conflict with a solemn duty and successfully assert that it had the right to overturn the solemn decision of the Sovereign States imposing a duty, in its exercise of the powers that those same States had granted it?

Without, in this brief, discussing in any wise the question of whether the National Defense and National Security could be promoted by the control of the sale and consumption of intoxicating liquors, we present the question, which is the more binding upon the National Government, powers granted or duties imposed.

The National Government, through its enforcement agencies, could dry Mississippi, with respect to intoxicating liquors, within a week's time, as dry as the Sahara desert is of water. There was never any occasion for the extension of a maximum price on whiskey into the territory of Mississippi, a dry state.

If the National Government could repel the invasions of the Japanese Empire, and her allies, and prevent them from landing on the Pacific coast, much more easily could it have prevented the landing of intoxicating liquors on Mississippi's soil.

We submit to the Court that the question presented is, must the Government perform its duties, imposed and solemnly assumed, or can it brush them aside and say that in an effort to aid the law enforcement they placed a ceiling price on intoxicating liquors and thereby make for another regulation, a law and penalty to be imposed for its violation.

We respectfully submit that the opinion rendered in this case is erroneous. That the dissenting opinion is in line with the law, controlling and that the petition for a writ of certiorari should be granted and that the Court should reverse the United States Emergency Court of Appeals' opinion rendered herein.

Respectfully submitted,

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